

BakerHostetler

August 19, 2015

Baker&Hostetler LLP

11601 Wilshire Boulevard
Suite 1400
Los Angeles, CA 90025-0509

T 310.820.8800
F 310.820.8859
www.bakerlaw.com

Nancy Inesta
direct dial: 310.442.8833
ninema@bakerlaw.com

Gerald Etchingham
Associate Chief Administrative Law Judge
National Labor Relations Board
901 Market Street, Suite 300
San Francisco, California 94103-1779

Re: Shamrock Foods and Shamrock Farms Dairy Division
Case 28-CA-150157

Dear Judge Etchingham:

Pursuant to 29 CFR 102.16, Respondent Shamrock Foods ("Shamrock") requests that the hearing currently scheduled in this matter to begin on September 8, 2015 be briefly postponed for approximately three weeks, to Monday, September 28th.

The original charge in this matter was filed on April 15, 2015. Approximately three months later, on July 27th, we received the Complaint and Notice of Hearing (the "Complaint"), scheduling the hearing for September 8th. On August 17, 2015 (three weeks before the scheduled hearing) Shamrock's counsel also received an amendment to the Complaint, which Shamrock must answer by August 27, 2015.

For the reasons explained below, just and proper cause exists for granting the requested continuance. Whereas Shamrock will suffer significant prejudice if the hearing is *not* continued, neither the General Counsel nor the Union will suffer prejudice from this brief postponement. In fact, the General Counsel will likely benefit from the continuance, as it intends to subpoena a Company representative who will be out of the country on the date scheduled for the hearing. This individual is similarly critical to Shamrock's defense. Given the fact that the hearing is scheduled to begin the day after the Labor Day weekend, other witnesses may also be unavailable. In short, an additional three weeks before trial will result in minimal delay and is necessary to ensure the integrity of the proceedings in this matter.

Key Witness Mark Engdahl Will Be Out of the Country

At least one key Shamrock witness, Mark Engdahl, will be out of the country the week of September 8, 2015, and not returning until the following week.¹ Mr. Engdahl, Shamrock's Vice President of Operations, is specifically mentioned in 9 allegations set forth in the Complaint concerning purportedly unlawful statements. In his absence, Shamrock's ability to refute these allegations will be significantly impaired. In addition, Mr. Engdahl will be one of Shamrock's primary witnesses in providing evidence concerning a number of additional Complaint allegations in which he is not specifically named. His absence will therefore deprive Shamrock of its right to adequately present its defense on an even broader scale.

Indeed, the General Counsel has essentially conceded that Mr. Engdahl's presence at the hearing will be critical. During the pre-hearing conference held on August 17, 2015 before the Honorable Brian C. DiCrocco, the General Counsel stated its intention to subpoena Mr. Engdahl to testify as part of the General Counsel's case. Given Mr. Engdahl's inability to postpone his trip on such short notice, the employer will have no choice but to move to quash any such subpoena.

A brief and reasonable continuance of only three weeks will resolve these issues and eliminate the need for the parties to expend time and resources on litigation over a subpoena. The requested continuance therefore is proper and should be granted.

Pre-Scheduled Personal and Business Conflicts

Even aside from Mr. Engdahl's absence, the September 8th hearing date does not provide Shamrock with adequate time to prepare its defense. As a preliminary matter, Shamrock's counsel was out of the office for two weeks immediately following receipt of the Complaint. Specifically, Mr. Krupin was traveling from August 1 through August 17, 2015 on a pre-scheduled family vacation. Ms. Inesta was also scheduled to be out of the office beginning on August 1st, and expected to return on August 10, 2015. Her return was delayed until August 15th, however, due to complications that arose following a medical procedure. During this same period of time, a number of Shamrock's key decision-makers were also out of the office on pre-planned time off of work with their respective families.

In addition to the foregoing, Shamrock's counsel each have a significant number of pre-scheduled business commitments during the month of August which will further prejudice Shamrock's ability to adequately and meaningfully present its defense. These commitments include:

- contract negotiations the week of August 10th;
- contract negotiations the week of August 17th;
- contract negotiations the week of August 24th;

¹ Shamrock's counsel is in the process of obtaining the schedules and availability of key witnesses for the September 8, 2015 hearing. We anticipate that other witnesses may likewise be unavailable given that the hearing is scheduled to begin immediately following the Labor Day weekend.

- contract negotiations on September 1 and 2;
- depositions scheduled for August 20, 24 and 25, 2015; and
- depositions scheduled for September 3, 4, 2015.

In addition to the above dates, Shamrock's counsel is involved in negotiations over a collective bargaining agreement set to expire on September 21, 2015. While the parties have attempted to reach agreement on a successor contract, they remain far apart on a number of economic items. The Union is not available to reconvene until the week of September 8th, and is not available thereafter until early October.

Again, a short, three-week continuance would avoid these difficulties.

A Continuance Would Provide An Opportunity To Streamline The Hearing

Based upon the estimates provided by the parties during the August 17th telephonic status conference, the hearing in this matter will require no less than five (5) days, and may require even longer (depending upon rebuttal testimony, evidentiary disputes, etc.). The General Counsel estimated that its case-in-chief alone will require three days of testimony. Thus, unless the parties are able to narrow the issues prior to the hearing, this case will consume significant judicial resources.

Settlement efforts, however, are just beginning. On August 11, 2015, the Region provided Shamrock's counsel, who was out of the office at the time, a draft of an informal settlement agreement. Because Shamrock's key decision makers and its counsel were out of the office (of which the Region was notified) the parties were not able to meaningfully discuss or move forward with respect to the informal settlement. Only two days later, on August 13, 2015, and while Shamrock's counsel was still out of the office due to complications from a medical procedure, the Region retracted its offer of an "informal" settlement and provided a Formal Settlement Stipulation for Shamrock's review. Given the volume of claims in the Complaint (approximately 40-50), the document is extensive and is being discussed.

Even if the case cannot be settled entirely, there may be certain allegations that can be dropped or resolved. Moreover, even if the allegations themselves cannot be resolved, the parties may be able to negotiate factual stipulations that will obviate the need for testimony on a number of matters. However, the numerous scheduling conflicts mentioned above have already limited the amount of time that Shamrock has to prepare for the hearing.

Shamrock is therefore in the difficult position of having to choose between spending its limited available time on working to narrow the issues for trial or on preparing its defense. A brief continuance of three weeks will, at least to some extent, allow Shamrock to do both.

Shamrock's Substantive Rights Are Implicated

The due process implications of the above conflicts and other issues are further magnified when considered in the context of the Complaint allegations. Of the more than forty separate and distinct allegations listed in the 16 page Complaint, the majority pertain to statements made by purported Company representatives. Section 8(c) of National Labor Relations Act recognizes an employer's right to free speech, as does the First Amendment to the United States Constitution. Denying Shamrock an adequate opportunity to prepare its defense therefore

presents a significant risk that speech protected by the Act and by the Constitution will be improperly restrained. The requested extension of only three weeks will materially reduce this possibility. The resulting burden on the General Counsel and the Union, on the other hand, is slight (if it exists at all), particularly in light of the General Counsel's intention to subpoena Mr. Engdahl to testify as part of its case-in-chief. Shamrock's requested extension accordingly should be granted, and the hearing should be postponed to September 28th.

Position of the Parties

We have contacted Union counsel in this matter to determine his position on the requested postponement. Despite the foregoing, Union counsel indicated that he will not agree to a postponement.

Conclusion

Shamrock seeks a meaningful opportunity to (1) respond to the amended Complaint, (2) engage in negotiations in an attempt to narrow the issues for trial, and (3) prepare an adequate defense of its right to free speech. The currently scheduled trial date of September 8th will frustrate each of these objectives. Thus, for all of the foregoing reasons, and for good cause shown, Shamrock requests a three-week continuance of the trial to September 28, 2015.

We appreciate your time and consideration of this matter. If you have any questions or need additional information, please do not hesitate to contact me.

Respectfully submitted,


Nancy Inesfa

cc: Jay Krupin, Attorney at Law
Baker & Hostetler LLP
1050 Connecticut Avenue NW, Suite 1100
Washington, DC 20036

David A. Rosenfeld, Attorney at Law
Weinberg Roger and Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501

Bakery, Confectionery, Tobacco Workers' and
Grain Millers International Union, Local
Union No. 232, AFL-CIO-CLC
3117 North 16th Street, Suite 220
Phoenix, AZ 85016-7679

Gerald Etchingham
August 19, 2015
Page 5

Brian C.DiCrocco
NLRB Division of Judges, San Francisco
National Labor Relations Board
901 Market Street, Suite 300
San Francisco, California 94103-1779

Cornele A. Overstreet
Regional Director
United States Government
National Labor Relations Board
Region 28
2600 N. Central Ave., Ste. 1400
Phoenix, AZ 85004-3019

Sara Demirok
Field Attorney
National Labor Relations Board, Region 28
2600 N. Central Avenue, Suite 1400
Phoenix, AZ 85004

Elise F. Oviedo
U.S. Government Attorney
National Labor Relations Board
Region 28 – Las Vegas Resident Office
300 Las Vegas Blvd. South, Ste. 2-901
Las Vegas, NV 89101-6637

STATEMENT OF SERVICE

I, Talameo Salanoa, declare:

I am employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 11601 Wilshire Boulevard, Suite 1400, Los Angeles, CA 90025-0509. On August 19, 2015, I served a copy of the within document(s): **DEFENDANTS SHAMROCK FOODS AND SHAMROCK FARMS DAIRY DIVISION'S REQUEST FOR POSTPONEMENT OF HEARING PURSUANT TO 29 CFR 102.16**

☐

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

☐

by placing the document(s) listed above in a sealed envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a **FEDERAL EXPRESS** agent for delivery.

☒

by transmitting via electronic mail the document(s) listed above to the e-mail address(es) set forth below on this date.

PLEASE SEE SERVICE LIST ATTACHED

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 19, 2015, at Los Angeles, California.



Talameo Salanoa

SERVICE LIST

1
2 Jay Krupin, Attorney at Law
3 Baker & Hostetler LLP
4 1050 Connecticut Avenue NW, Suite 1100
5 Washington, DC 20036
6 jkrupin@bakerlaw.com
7
8 David A. Rosenfeld, Attorney at Law
9 Weinberg Roger and Rosenfeld
10 1001 Marina Village Parkway, Suite 200
11 Alameda, CA 94501
12 DRosenfeld@unioncounsel.net
13
14 Bakery, Confectionery, Tobacco Workers' and
15 Grain Millers International Union, Local
16 Union No. 232, AFL-CIO-CLC
17 3117 North 16th Street, Suite 220
18 Phoenix, AZ 85016-7679
19 DRosenfeld@unioncounsel.net
20
21 Brian C. DiCrocco
22 NLRB Division of Judges, San Francisco
23 National Labor Relations Board
24 901 Market Street, Suite 300
25 San Francisco, California 94103-1779
26 Brian.DiCrocco@nrlb.gov
27
28 Cornele A. Overstreet
Regional Director
United States Government
National Labor Relations Board
Region 28
2600 N. Central Ave., Ste. 1400
Phoenix, AZ 85004-3019
Cornele.overstreet@nrlb.gov

Sara Demirok
Field Attorney
National Labor Relations Board, Region 28
2600 N. Central Avenue, Suite 1400
Phoenix, AZ 85004
Sara.demirok@nrlb.gov

Elise F. Oviedo
U.S. Government Attorney
National Labor Relations Board
Region 28 – Las Vegas Resident Office
300 Las Vegas Blvd. South, Ste. 2-901
Las Vegas, NV 89101-6637
Sara.Demirok@nrlb.gov